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09/557,234	04/24/2000	Patrick J. O'Donnell	PODON.001A	8230

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KNOBBE MARTENS OLSON & BEAR LLP  
2040 MAIN STREET  
FOURTEENTH FLOOR  
IRVINE, CA 92614

EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 05/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/557,234

Applicant(s)

O DONNELL, PATRICK J.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 19-28 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-28 and 33-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19-28 and 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over LBS Buyers Guide 2001, Horticulture & Amenity Supplies in view of Kimbrew-Walter Roses "Jet-All" sprayer.

Regarding Claims 19, 20, and 36, LBS teaches spraying apparatuses for horticulture application providing a hand held spraying apparatus having a handle, an elongated body portion, and a nozzle portion at a distal end of the body portion, the nozzle portion having a longitudinal axis and being adapted to direct water flow outwardly around the circumference of the nozzle axis, the apparatus configured so that moving the handle correspondingly moves the nozzle portion; inherently providing a source of water under pressure; inherently placing the spraying apparatus into communication with the source of water under pressure (LBS Plastic Soft Rain Lance, Metal Soft Rain Lance, Fan Spray Lance, Regulating Lance, Trigger Lance, and Heavy Duty Trigger Lance).

LBS is silent on a method for removing insects from and cleaning a plant having leaves. However, "Jet-All" teaches using a spraying apparatus by positioning the nozzle adjacent an underside of a plant leaf so that a portion of the water directed by the

nozzle impacts the leaf underside and the longitudinal axis of the nozzle is generally horizontally disposed at a first elevation and advancing and retracting the nozzle generally horizontally so that a flow of water imparts the leaf underside along its length ("Jet-All" brochure). It would have been obvious to one of ordinary skill in the art at the time of the invention to apply the apparatus taught by LBS in a method of insect removal taught by "Jet-All" since the modification is merely the application of alternate equivalent spraying apparatuses selected for different cost and ergonomic advantages. The spraying apparatus contains all of the structural limitations of applicant's claim language and therefore has the capability of performing the method steps presented by "Jet-All". The intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

LBS as modified inherently teaches rotating the apparatus at least about 90 degrees so that the longitudinal axis of the nozzle is moved to a second elevation but remains generally horizontally disposed during rotation and advancing and retracting the nozzle generally horizontally at the second elevation to efficiently and effectively treat all size plants.

Regarding Claim 21, LBS as modified teaches the nozzle being adapted to direct flow of water in a substantially vertical plane. (LBS Plastic Soft Rain Lance, Metal Soft Rain Lance, Regulating Lance, Trigger Lance, and Heavy Duty Trigger Lance).

Regarding Claim 22, LBS as modified by "Jet-All" teaches that at least one of the substantially vertical planes is substantially perpendicular to the nozzle portion and inherently comprising the step of holding the elongated body in a substantially horizontal attitude. (LBS Plastic Soft Rain Lance, Metal Soft Rain Lance, Regulating Lance, Trigger Lance, and Heavy Duty Trigger Lance).

Regarding Claim 23 and 33, LBS as modified by "Jet-All" teaches that the handle includes a bend point and inherently teaches the step of adjusting the elevation of the body portion by rotating the handle about a proximal end of the handle. (LBS Plastic Soft Rain Lance, Metal Soft Rain Lance, Fan Spray Lance, Regulating Lance, Trigger Lance, and Heavy Duty Trigger Lance).

Regarding Claim 24, LBS as modified by "Jet-All" inherently discloses advancing and retracting the apparatus into and out of the plant at a plurality of locations, so that water directed by the nozzle simultaneously impacts the top side of a first plant leaf along at least a portion of its length and the underside of a second plant leaf along at least a portion of its length.

Regarding Claim 25 and 34, LBS as modified discloses that the nozzle is adapted to create a substantially planar contiguous wall of water around the circumference of the nozzle (LBS Plastic Soft Rain Lance, Metal Soft Rain Lance, Regulating Lance, Trigger Lance, and Heavy Duty Trigger Lance).

Regarding Claim 26, LBS as modified discloses that the nozzle is adapted to create two or more substantially planar and contiguous walls of water around the circumference of the nozzle, the walls of water being spaced apart from each other

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(LBS Plastic Soft Rain Lance, Metal Soft Rain Lance, Fan Spray Lance, Regulating Lance, Trigger Lance, and Heavy Duty Trigger Lance).

Regarding Claims 27 and 28, LBS as modified by "Jet-All" inherently discloses advancing and retracting the nozzle between leaves of the plant at a plurality of locations, so that the portions of the wall of water simultaneously impact undersides of leaves generally above the nozzle, top sides of leaves generally below the nozzle, and any matter that may be between the leaves of the plant.

Regarding Claim 35, LBS as modified teaches the broadly presented claim language that the elongated body and the nozzle portion being **substantially** straight and having **substantially** the same longitudinal axis. (LBS Plastic Soft Rain Lance, Metal Soft Rain Lance, Regulating Lance, Trigger Lance, and Heavy Duty Trigger Lance).

Regarding Claim 37, LBS as modified by "Jet-All" inherently teaches the step of holding the elongated body at a generally horizontal attitude and advancing and retracting the nozzle through the application of the apparatus to a variety of different size plants.

Regarding Claim 38, LBS as modified by "Jet-All" teaches that elongated body is at least 18 inches long (See "Jet-All" flier).

Regarding Claim 39, LBS as modified teaches the handle is bent about 30-60 degrees at the bend point (LBS Plastic Soft Rain Lance, Metal Soft Rain Lance, Regulating Lance, Trigger Lance, and Heavy Duty Trigger Lance).

Regarding Claim 40, LBS as modified by "Jet-All" inherently teaches rotating the apparatus about 90 degrees while keeping the longitudinal axis of the nozzle generally horizontally disposed during rotation and advancing and retracting the generally horizontally into and out of the plant a plurality of times while rotating the apparatus.

***Response to Arguments***

Applicant's arguments with respect to claims 19-28 and 33-40 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-

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3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV  
May 27, 2003



PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

5/27/03